HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII, Rule 32 (2)(b)

Description of the case.

A.O. No. 182 of 2005

National Insurance Co. Ltd. Appellant

Versus

Virendra Singh Negi & anothers
Respondents

Approved for reporting.

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Not approved for reporting

Date of decision: 11.10 2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 182 of 2005

National Insurance Company Ltd. Ashley Hall, Dehradun through its Divisional Manager, Divisional Office, Haldwani, District Nainital
..... Appellant

versus

1. Shri Virendra Singh Negi, s/o Late Sri Keshar Singh
2. Smt. Shushila Devi w/o Sri Virendra Singh, r/o Village Mail, P.O. Pokhra, Patti Talai, District Pauri Garhwal
3. Smt. Amarjeet Kaur w/o Sri Gurubux Singh r/o 147, Raipur, P.O. Raipur, District Dehradun.
4. Sri Rajendra Singh s/o Sri Padam Singh R/o Village Raipur, P.O. Raipur, District Dehradun.

..... Respondents

Sri K.K. Sah, Advocate for the Appellant
None for the respondents.

Dated: October 11, 2006

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

Hon. Rajesh Tandon, J.

1) This is insurer's appeal against the Award dated 23.2.2006, passed by the Motor Accident Claims Tribunal, Dehradun.

2) The claimants Sri Virendra Singh Negi and Smt. Sushila Devi preferred a claim petition under section 166 of the Motor Vehicles Act, for the grant of compensation on account of the

death of their son Pradeep Singh Negi in a motor vehicle accident. According to the claimants on the fateful day on 1.4.2004, deceased pradeep Singh, who was employed in Garhwal Mandal Vikas Nigima as Mines Clerk was going towards Doiwala on foot. When he reached near Kunvawala, Truck No. U.P. 07D- 2930, which was going in the same direction hit, deceased Pradeep Singh and crushed him under the wheels, who died instantaneously. According to the claimants the deceased was getting Rs.3,505/- per month as salary. At the time of accident he was 23 years of age.

3) Respondent no. 3, owner of the truck has denied the assertions made in the claim petition. She has stated that the accident has not taken place due to rash and negligent driving by the truck driver but the deceased was under intoxication and when he came in front of truck, the truck driver turned the truck extremely left and the truck went in the agriculture field. She has stated that truck has not dashed the deceased at all and some other vehicle might have hit him.

4) The insurance company, appellant has admitted that the truck involved in the accident was insured with it but it has been denied that the accident had taken place due to negligence of truck driver. Further it has been stated that the amount claimed as compensation is excessive.

5) In order to prove his case the claimants have examined P.W. 1 Virendra Singh Nagi, P.W.2 Jagdev Singh and P.W. 3 Nikhil Sharma. The claimants also filed copy of F.I.R. last pay certificate of the deceased, High School certificate of the deceased and post mortem report. The opposite parties examined D.W.1 Mangat Ram and D.W.2 Rajendra Singh and filed copy of driving licence.

6) On the basis of the evidence adduced by the claimants, the Claims Tribunal has held that the accident had taken place due to rash and negligent driving of the truck by Sri Rajendra Singh.

7) So far as the compensation is concerned the Tribunal has recorded the finding that at the time of accident the age of the deceased was 23 years. The claimants have examined P.W.3 Nikhil Sharma who has stated that the deceased was employed in Garhwal Mandal Vikash Nigam on daily wages and he was getting Rs.3,500/- per month. He proved the last master-roll of the deceased in which he was paid Rs.2,308/- for 26 days, therefore, the claims Tribunal has assessed his monthly income at Rs.2,308/- per month and after deducting 1/3 of the amount for his own expenses by the deceased, the annual loss of dependency was assessed to Rs.18,468/-. Considering the age of the deceased as well as the claimants, multiplier of 17 has been selected by the Trial Court. Thus the total loss sustained by the claimants comes to Rs. 16468 x 17 = 3,13,958/-. The claims Tribunal has also awarded a sum of Rs.10,000/- for loss of love and affection and Rs.2,000/- for funeral expenses. Beside this the Claims Tribunal has also awarded a sum of Rs. 5,000/- for mental pain and agony. Thus claims Tribunal has awarded a total sum of Rs.3,25,956/- as compensation along with pendente lite and future interest at the rate of 6% per annum.

8) Sri K.K. Sah, counsel for the appellant has submitted that the Tribunal has erred in holding the rash and negligent driving by the truck driver and also selecting multiplier of 17 while it

should be in accordance with the age of claimants. The amount of compensation awarded is excessive.

9) So far as the rash and negligent driving is concerned, the claimant examined P.W.2 Jagdev Singh. The accident took place in front of the shop of this witness. This witness has stated that deceased Pradeep Singh came to his shop for repairing punctured tire of his scooter. After leaving his scooter in the shop he was going to search his friend towards Doiwala. A truck came from the side of Dehradun which was being driven rashly and negligently. The truck hit Pradeep Singh, who died at the spot. This witness has also stated that when Pradeep Singh came at his shop, he was not intoxicated. This witness has stated as under:

;g nq?kZVuk esjh Vk;j dh nqdku ls djhc „Œ xt nwj ?kVh FkhA iznhi flag usch esjh nqdku ls MksbZokyk dh rjQ ls vkus nksLr dks ns[kus tk jgk Fkk ejsh nqdku ij iaUpj yxokus ds fy, iwNus vk;k FkkA V~d nsgjknwu dh rjQ ls cgqr rsth ls MksbZokyk dh rjQ vk jgk Fkk V~d okys us iznhi usxh dks VDdj ekj nhA

10) Statement of P.W.1 also finds support by the first information report which was lodged in the Police Station just after the accident.

11) Sri K. K. Sah, counsel for the appellant has also assailed the judgment and award of the Tribunal on the ground that the multiplier selected by the claims Tribunal is much higher. The selection of multiplier of '17' by the Tribunal has been challenged by the appellant Insurance Company on the basis of the dictum of Apex Court in the case of **Municipal Corporation of Greater Bombay vs. Laxman Iyer and another (2003) 8 SCC 731.** The learned counsel for the

appellant Insurance Company vehemently agrued that the Tribunal has erred in selecting the multiplier of 17 as the Apex Court in the case of Laxman Iyer (Supra) has held that, in those cases where the claimants are parents of the deceased, the multiplier should not be more than 10. Paragraph 12 of the Apex Court judgment is reproduced below:

"12. *Keeping in view the observations made by this Court in various cases, several other factors need to be taken note of. The deceased was unmarried. The contribution to the parents who had their separate earnings being employed and educated has relevance. The possibility of reduction in contribution once a person gets married is a reality. The compensation is relatable to the loss of contribution or the pecuniary benefits. The multiplier adopted by the Tribunal and confirmed by the High Court is certainly on the higher side. Considering the age of the claimants, it can never exceed 10 even by the most liberal standards. Worked out on that basis the amount comes to Rs 3.6 lakhs at the monthly expected income fixed by the Tribunal and confirmed by the High Court. Looking into the nature of the contributory negligence of the deceased after making an appropriate deduction which can reasonably be fixed at 25%, the compensation amount payable by the Corporation can be fixed at rupees three lakhs including the amount awarded by the Tribunal and confirmed by the High Court for loss of expectation of life. Interest at the rate as awarded by the High Court is maintained from the date of application for compensation."*

12) From the above quoted judgment it is apparent that as the father of the deceased, in that case, was employed and had his own earnings, the Apex Court held that the multiplier of 10 was appropriate in that case. In the present case, the claimants are mother and father of the deceased. The father of deceased Sri Virendra Singh Negi died on 6.2.2005 during the pendency of the appeal, as per report of the process server based on the certificate of Gaon Pradhan. Now there remained the widowed mother of the deceased. Smt. Sushila Devi was 45 years of age at the time of filing claim petition. She was wholly dependent on the income of her deceased son Pradeep Singh. Since the Claims Tribunal has recorded a finding that at the time of accident the income of the deceased was Rs.2,308/- and the claimants' dependency was assessed to Rs.18,468/- per annum, the compensation to be awarded to the claimants, at least, should be such amount, which if deposited in a fixed deposit with a Nationalized Bank can fetch Rs. 18,468/- per annum as interest. The amount of compensation Rs.3,13,956/- assessed by the Claims Tribunal by multiplying the annual dependency of Rs.18,468/- with the multiplier of 17, when deposited in a fixed deposit with a Nationalized Bank would fetch, at the prevalent rate of interest of 6% per annum, a sum of Rs.18,837/- per annum, which is almost similar to the dependency of the claimants assessed by the Tribunal. We, therefore, do not find any good ground for interference on the question of multiplier selected by the Tribunal.

12) The Apex Court in the case of **T.N. State Transport Corporation Ltd. vs. S. Rajapriya and others, (2005) 6, SCC 236,** has held that the in a motor accident claim case, what is important is that the compensation to be awarded by

the Tribunal/Court should be just and proper compensation in the facts and circumstances of the case. Paragraphs 8, 9 and 10 of that case are reproduced below:

"8. *The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.*

9. *The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.*

10. *Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that*

matters", and the court must try to assess as best as it can the loss suffered."

13) Thus, seen from any angle, the compensation of Rs.3,13,956/- assessed by the Tribunal after multiplying the annual dependency of Rs.18,468/- with the multiplier of 17 appears to be just and proper compensation in the case. The sum of Rs.10,000/- awarded for loss of love and affection and Rs.2,000/- for funeral expenses, also does not call for any interference. Thus the total sum of Rs. 3,25,956/- awarded as compensation on the death of Pradeep Singh in just and proper.

14) The Claims Tribunal awarded 6% pendente lite and further interest in case the amount of award is not paid within two months from the date of award, does not call for any interference.

15) Thus we find that the amount of compensation assessed by the Claims Tribunal by applying appropriate multiplier is neither excessive nor exorbitant in the facts and circumstances of the case. Thus we find no infirmity or illegality in the order of the Tribunal.

16) The appeal, therefore, lacks merit and is hereby dismissed.

18) No order as to costs.

(Rajesh Tandon, J.) **(Rajeev Gutpa, C.J.)**

Dated: October 11, 2006

*Dhyani